(1)

(04)

BEFORE THE HONOURABLE HIGH COURT OF CHHATTISGARH
AT BILASPUR

SECOND APPEAL NO. 418 /2005 **Single Bench**

APPELLANT/DEFENDANT

Suleman, son of Manohar, caste, Uraon, aged about 55 years, occupation – agriculturist, resident ofvillage Amapali, Tah. Dharamjaigarh, Distt. Raigarh (C.G.)

P.R. No. 2324/05
Presented by Shri U.K. Keshari
dated 08/9/05

VERSUS

RESPONDENTS/PLAINTIFFS

1. Girdhari, son of Budhuram, aged about 60 years, caste – Kanwar, occupation – agriculturist, resident of village Amapali, Tah. Dharamjaigarh, Distt. Raigarh (Chhattisgarh)

2. The State of Chhattisgarh, through – the District Collector, Raigarh (C.G.)

RECEIVED-COPY
8.9.05
CLERK to A. G. BILASPUR

SECOND APPEAL UNDER SECTION 100 OF THE CODE OF CIVIL PROCEODURE, 1908

XI-HC-78

(20)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

**मामला क्रमांक** SA.418/05 **सन् 200**

**आदेश पत्रक (पूर्वानुबद्ध)**

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
|---|---|---|

3.10.2006

Shri U.R. Koshley counsel for the appellant.
Heard on the question of admission.

The appellant has preferred this appeal under section 100 of the Code of Civil Procedure against the judgment and decree dated 16.6.2005 passed by District Judge, Raigarh in Civil Appeal No. 38-A/2004 whereby the appeal preferred by the appellant against the judgment and decree dated 31.8.2004 passed by Civil Judge, Class-I Dharamjaygarh in civil suit No. 20-A/2003 decreeing the suit of the respondents/plaintiffs for permanent injunction has been confirmed, on the following substantial question of law:

> Whether the learned courts below were justified in granting the decree of declaration and injunction in favour of one co-owner and whether the findings recorded by the courts below are perverse and liable to be set aside?"

Case of the plaintiff before the courts below is that he is the recorded owner of the suit land bearing Khasra No. 264/5 area 0.121 hectares and he is in possession of the same. However, the defendant is interfering with his possession and a report has been lodged against the defendant's illegal act. On the basis of aforesaid pleadings a prayer for permanent injunction restraining the defendant from interfering with the possession has been made. The defendant in his written statement categorically stated that he is the owner of Khasra No. 264/1-Kh area 0.202 hectares and he is in possession of the same. His land is about half

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर



**मामला क्रमांक** SA.418/05 **सन् 200**

(21)

**आदेश पत्रक (पूर्वानुबद्ध)**

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
|---|---|---|

kilometer away from the suit land and at no point of time the defendant interfered with the possession of the plaintiffs over the suit land. The trial Court after recording the statements of the witnesses has decreed the suit which has been subsequently affirmed by the lower appellate Court.

From perusal of the pleadings of the respective parties and evidence available on record it is evident that there is no dispute with respect to the ownership of the suit land and possession of the plaintiff over the same. Courts below on the basis of evidence available on record and the statements of the witnesses including that of the present appellant have arrived at the conclusion that the plaintiff is the owner of the suit land and the appellant/defendant is in fact interfering with the his possession. The above finding is based on proper appreciation of the evidence available on record and on admission of the defendant that the plaintiff is the owner of the suit land and he is not interfering with his possession. The above finding is a concurrent finding of fact recorded by both the Courts below.

Learned counsel for the appellant could not point out any perversity in the findings recorded by both the Courts below. The concurrent findings of the courts below are based on material available on record after proper appreciation of the evidence and no substantial question of law as proposed by the counsel for the appellant is involved for adjudication of this appeal.

In the result the appeal being devoid of substance is liable to be dismissed and the same is hereby dismissed.

**Sd/-**
**Dhirendra Mishra**
**Judge**

P.T.O.

11.10.06